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Attorneys for Defendant
Paul A. Sallaberry

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MARK LESLIE, KENNETH E.
LONCHAR, PAUL A. SALLABERRY,
MICHAEL M. CULLY, and DOUGLAS
S. NEWTON,

Defendants.

Case No. C 07-3444 JF

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT PAUL A.
SALLABERRY'S MOTION TO DISMISS**

Date: January 18, 2008
Time: 9:00 AM
Place: Courtroom 3, 5th Floor
Judge: The Honorable Jeremy D. Fogel

Complaint Filed: July 2, 2007

In support of his Motion to Dismiss, Defendant Paul A. Sallaberry hereby requests that the Court take judicial notice of the advertising agreement entered into between America Online, Inc. and Veritas Software Corp. on September 29, 2000. A true and correct copy of this agreement is attached as Exhibit A to the Declaration of Lisa A. Jacobs in Support of Defendant Sallaberry's Motion to Dismiss Fraud Claims and to Strike Certain Requests for Relief.

On a motion to dismiss, a court may take judicial notice of facts outside the pleadings, and doing so does not convert such a motion to a motion for summary judgment. *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

Moreover, the document of which Defendant Sallaberry seeks judicial notice is referenced

1 in the Complaint. (Compl. ¶¶ 24-25, 29.) A court may consider documents whose contents are
2 alleged in a complaint but which are not physically attached to the pleading when ruling on a
3 Rule 12(b)(6) motion to dismiss without converting the motion into one for summary judgment.
4 *Branch v. Tunnell*, 13 F.3d 449, 453-54 (9th Cir. 1994).

5 DATED: October 5, 2007

Respectfully submitted,

SHARTSIS FRIESE LLP

6 By: /s/ Lisa A. Jacobs
7 LISA A. JACOBS

8 Attorneys for Defendant
9 PAUL A. SALLABERRY

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